

## **TECHNICAL ASSISTANCE – BACKGROUND CHECKS**

Prepared by the Division of Human Resources in the Department of Personnel & Administration. July 18, 2007.

Background check is a generic term used to refer to the collection and use of information about people and their backgrounds. For the purposes of this Technical Assistance, background checks do not include employment verifications, educational verifications, or reference checks conducted by Human Resources and hiring authorities in the course of final selection of employees. Verification of information presented on an official employment application can and should be conducted regardless of a background check policy.

The background checks discussed in this Technical Assistance, including credit checks, driving history, and criminal records checks, require standardized application. Background checks are an important part of the hiring process because a thorough background check can assist in assuring the hiring authority that a prospective employee or contractor will be an asset and not a liability to the department. The operational guidelines in this technical assistance focus on the explanation and use of background checks.

Every department that requires employee or contractor background checks must have an official, written policy regarding the circumstances under which background checks are conducted and the process that is to be followed.

### **A good background check policy**

- Identifies the types of jobs that require background checks
- Specifies the type and scope of background checks
- Defines or outlines failure criteria for the types of checks conducted
- Defines what actions will be taken for background check failures, particularly with regard to current employees
- Requires that background check notice is provided on job announcement
- Requires applicant consent to undergo background check
- Defines employee reporting requirements of relevant offenses
- Specifies what records are kept; where, and for how long
- Assures consistent application of the policy
- Identifies the final decision maker and resolution of disagreements regarding background check policy and process
- Should provide guidelines in which appointing authority can exercise their discretion regarding use of background information
- Informs the workforce of the policy and possible consequences of its application
- Ensures compliance with the Fair Credit Reporting Act and other applicable laws and regulations including when the employee is required to be notified that information about their background was used in an employment decision
- Provides for periodic review of the policy
- Safeguards against bias by ensuring a fair and reasonable process based strictly on job-related criteria

### Which positions require a background check?

As with other job-related requirements, the Human Resources office and appointing authorities are responsible for identifying positions for which a background check is appropriate in the absence of a statutory obligation. Such identification must be made prior to announcing and filling a position.

The need for a background check must be justified by the duties of the position, not simply by its job title. The policy may define characteristics such as “positions of trust” and “security-sensitive positions” as categories that require background checks. For example, a position that is responsible for the care and safety of persons at risk may require a background check. This duty may or may not be shared by all positions in the class or organizational unit; HR will make this determination. Similarly, Accounting Technician positions responsible for handling funds or money may be deemed appropriate for a credit history check, but this does not imply that all Accounting Technicians are subject to the same standard. It is up to the HR office and appointing authority to determine whether a background check is appropriate and which type of check(s) are approved.

A department must conduct a background check where mandated by law. It is recommended practice that departments conduct background checks when the nature of a position is such that unlawful or inappropriate behavior would pose a particular risk or liability to the department or the state.

In addition to the aforementioned situations, examples of positions for which background checks have or may be approved include: armed law enforcement officials; custodians and professionals who are entrusted to carry master keys in housing environments including student, correctional, and youth detention; administrative assistants and technicians with access to the paper on which vital records are printed; professionals with access to sensitive or confidential personal information; laboratory technicians working with controlled substances; and maintenance personnel who frequently drive commercial vehicles; and laboratory technicians working with controlled substances.

### What type of background check is needed?

Some of the background checks available are:

- Colorado criminal
- County misdemeanor
- Other state (non-Colorado) criminal
- Federal criminal
- Employment verification
- Trak report (Social Security number information)
- Education verification
- Driving record review
- Personal references
- Credit checks
- “Trails” check (child abuse records)

In addition to identifying positions that require a background check, HR and appointing authorities must specify the type(s) of check to be conducted. For example, a position that requires driving state motor vehicles might require a check of driving records, but not a criminal history check. A position that handles highly sensitive information might be appropriately identified for a criminal history check, but not necessarily a driving record check.

When determining which checks should be conducted, the type and quality of information received should be considered. For example, criminal background checks conducted from fingerprints are more thorough than checks run on name only. Furthermore, this type of service can provide the requestor with ongoing updates if new convictions occur.

### How to obtain background information

Departments have wide discretion as to how to obtain background information. Many organizations provide background check services, including state agencies (e.g., Colorado Department of Public Safety), and for-profit organizations such as Mountain States Employer’s Council.

A reference list is provided in Appendix A comprised of a sampling of background information providers.

### When to conduct background checks

Department policies must address the timing of background checks within the selection process. Alternatives include job offers contingent upon passing background checks (recommended) and background checks during the selection process. The following considerations pertain to background checks and are not intended to restrict verification of information on the application that takes place throughout the selection process.

- Job offers contingent upon passing background checks - It is a recommended practice that departments conduct background checks at the final stage of hiring. In this practice, when filling positions for which a background check has been approved and announced, the selection process proceeds through offer of employment. Employment offers are made contingent upon the selected individual passing a background check. At the time of offer, the selected individual completes the necessary paperwork to authorize the background check. The individual may begin employment; however, such employment remains contingent upon the background check until all relevant information has been received by the department and has revealed no violations that would preclude employment. Furthermore, it is recommended that the duties that necessitated the background check are considered and controlled until the background check has been cleared. This might mean that pending the background check, those duties are not performed and that the employee's access and duties are temporarily restricted.
- Background checks during the selection process - There are numerous situations in which background checks are conducted concurrent with or as part of the selection process. In this practice, candidates for employment are notified and authorize all required background checks at the time of application or acceptance after application screening. Failure to pass a background check as part of a selection process removes the applicant from further testing or consideration for hire.

### How to interpret background check information

Departments must determine the criteria for which candidates will be disqualified in advance of requesting background information. The determination must be made and approved by qualified HR personnel based on job analysis information. Disqualifying information is identified based upon the nature of the background check(s) conducted and upon the duties performed in the job and the associated risks. Specifically naming in advance all disqualifying findings may not be possible, as unexpected offenses may be revealed. In such cases, HR personnel must use professional discretion and consistent application to ensure that only job-related disqualifications occur.

Examples of disqualifying criteria include embezzlement or fraud conviction of an accountant applicant; sexual harassment judgment against a supervisory candidate; drunk-driving convictions against an individual who would be required to operate a state motor vehicle.

When identifying disqualifying criteria, it is recommended that factors such as the age of the offense be considered. Colorado Revised Statute 24-5-101 limits the effect of criminal convictions on employment rights. Therefore, it is required that employment decisions that result from criminal background information are appropriate and justifiable based on the duties and responsibilities of the job to be filled.

#### Disqualification of candidates based on background check information

It is recommended practice that candidates are given an opportunity to reveal possibly disqualifying events or offenses in advance of the background check. In some cases, this disclosure happens at the time of application for the job; alternatively, it may occur when the individual signs an authorization for the background check. When the events or offenses disclosed by the candidate are among those identified as disqualifying, the candidate must be notified that he or she is disqualified from eligibility for the position in question.

In the event that disqualifying information is revealed during the background check process, it is required that candidates are notified of the specifics of such information and are given an opportunity to supply information that refutes the charges, such as a disposition from the court. Background check policies must specify how such situations are to be handled; for example, providing candidates a limited number of business days to provide evidence of the inaccuracy of such information. In circumstances where the candidate is disqualified based on background check information, departments must notify the candidate of the disqualification, the reason, and any applicable appeal or director's review rights.

#### Conducting background checks on current employees

Current employees may be required to pass background checks when duties or requirements change, when employees change positions, or when required by law. In the event that job requirements change to include background checks, it may be necessary to conduct background checks of incumbents. Department policies must address such contingencies, including the handling of an employee who fails to meet the background standards for his or her current position.

It is recommended that department policies provide for employee disclosure of felony convictions or other offenses within background check failure criteria. Reporting requirements addressed in the policy include when employees are required to give notice, for which types of convictions (e.g., felony), and consequences of failure to disclose.

### Who is responsible for obtaining and interpreting background check information?

Department background check policies must address identification of where background check functions exist. In organizations where background check units exist, those units may set policy that is consistent with HR standards to ensure fair treatment of all candidates.

In organizations where HR is responsible for background checks, it is recommended that the candidates' records remain confidential within HR. Information regarding whether the candidate passed the background check should be conveyed to the appointing authority in terms of "passed" or "did not pass." HR personnel must use professional discretion with the personal background information that is revealed. When appointing authorities do not have a specific need to know background information, such information should not be shared.

In organizations where appointing authorities assume the responsibility of conducting background checks, such checks must be conducted under the guidance of HR. All aspects of background checks, including types of checks and disqualifying events, should be approved by HR before such practices are implemented.

### How is background check information maintained?

It is recommended practice that HR offices do not maintain background check information on employees. Evidence that a check was conducted, the date and type of background check, and sufficient record of a disqualifying outcome must be maintained with the examination file. Furthermore, if an individual is removed from a referral list based on the background information, a record of notification to the applicant must be retained in the examination file. Evidence of a background check that resulted in an employee being approved for hire must be included in the personnel file with the employee's employment application. However, actual background information that includes infractions, credit information, and other personal information should not be retained beyond its usefulness in approving the individual for employment, even if such information is favorable to the employee. Unless a specific need for such records exists, it is recommended that departments not retain such information.

What laws and regulations must be followed?

Background check policies must comply with the Fair Credit Reporting Act and other federal and state laws, including the Americans with Disabilities Act, Equal Employment Opportunity Commission guidance, Colorado's Anti-Discrimination Act and guidance from the Colorado Civil Rights Commission, and § 24-5-101, C.R.S. The background check policy must provide for fair and unbiased treatment no matter the gender, race, color, disability, national origin, marital status, religion, or other protected class of a candidate.

Every attempt is made to keep this information updated. For additional information, refer to the *State Personnel Board Rules and Director's Administrative Procedures* or contact your department human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the law and rule are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.

**APPENDIX A**  
**Sampling of Background Check Resources**

**Credit Background Checks**

Accurate Information Systems [www.accurateinformationsystems.com](http://www.accurateinformationsystems.com)  
Background Checks Available: Credit

Mountain States Employers Council [www.msec.org](http://www.msec.org) 303-839-5177  
Background Checks Available: Credit

**Criminal Records Checking Services**

Accurate Information Systems [www.accurateinformationsystems.com](http://www.accurateinformationsystems.com)  
Background Checks Available: Criminal, Civil Records, Federal Courts, and more

Background Information Services [www.bisi.com](http://www.bisi.com) 303-442-3960  
Background check available: Criminal Records

Colorado Bureau of Investigations [www.cbi.state.co.us](http://www.cbi.state.co.us) 303-239-4300  
Background checks available: State of Colorado and federal criminal history

CoCourts.com <https://www.cocourts.com/index.cfm>  
An initiative of the Colorado Judicial Branch; a source of court records

HireRight [www.hireright.com](http://www.hireright.com) 800-400-2761  
Background Checks Available: Criminal, Civil Records, Federal Courts, Motor Vehicle Records,  
Drug and Health Screening and more

Mountain States Employers Council [www.msec.org](http://www.msec.org) 303-839-5177  
Background Checks Available: Criminal, Civil Records, Federal Courts, and more

**Driving Record Check**

Department of Motor Vehicles [www.mv.state.co.us](http://www.mv.state.co.us) 303-205-5600, 2

Note: Candidates may go to any DMV to purchase a copy of their driving record (currently \$2.20) and receive the results immediately or, the employer can have the candidate complete a form DR2489 and request the record by mail (approx. 2 week turnaround time).

**Drug and Alcohol Testing**

Centura Centers for Occ. Medicine [www.ccomcolorado.org](http://www.ccomcolorado.org) 719-475-9496  
Quest Diagnostics [www.questdiagnostics.com](http://www.questdiagnostics.com) 303-899-6750  
Concentra, Inc. [www.concenturahealth.com](http://www.concenturahealth.com) 303-777-2777

**Professional Licensure Verification**

Colorado Dept. of Regulatory Agencies [www.dora.state.co.us/registrations/index.htm](http://www.dora.state.co.us/registrations/index.htm)



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